

3:11-cv-767-RCJ-WGC

ORDER

16 Currently before the Court is the plaintiffs' motion to remand to Nevada state court (#6).
17 For the following reasons, the plaintiffs' motion to remand (#6) is denied.

BACKGROUND

19 Plaintiffs Adil Baeza and Najwa Elbahi Baeza (“Plaintiffs”) are the owners of a
20 condominium located at 1404 E. 9th Street #6, Reno, Nevada (the “Property”). (Compl. (#1-1)
21 at 3). To finance the purchase of the Property, on December 8, 2006 Plaintiffs obtained a
22 \$120,000.00 loan from Nevada Federal Credit Union, which was secured with a deed of trust
23 encumbering the Property (the “Deed of Trust”). (Deed of Trust (#14-2) at 1-2). The Deed of
24 Trust listed Nevada Federal Credit Union as lender, Ticor Title of Nevada as trustee, and
25 Mortgage Electronic Registration Systems, Inc. (“MERS”) as the nominee and beneficiary.
26 (*Id.*).

27 At some point the note was transferred from Nevada Federal Credit Union to the
28 Federal National Mortgage Association and/or Defendant Bank of America. (Compl. (#1-1)
at 3). Bank of America began servicing the loan and Plaintiffs began to pay the regular

1 monthly payments to Bank of America. (*Id.* at 4). Plaintiffs later fell behind on their mortgage
 2 payments and entered into a permanent loan modification with Bank of America, which
 3 reduced the stream of payments to be made by Plaintiffs. (*Id.*). Despite this modification and
 4 the fact that Plaintiffs had paid each payment set forth under the modification, Bank of
 5 American sent Plaintiffs an acceleration letter on July 19, 2010. (*Id.*). On October 18, 2010,
 6 Defendant ReconTrust Company, N.A. (“ReconTrust”) recorded a notice of default and
 7 election to sell on behalf of MERS. (*Id.* at 5). On October 21, 2010, MERS formally assigned
 8 the Deed of Trust to BAC Home Loans Servicing, LP.¹ (*Id.*).

9 Plaintiffs elected for foreclosure mediation on October 22, 2010. (*Id.* at 6). On January
 10 10, 2011, First American National Default rescinded the notice of default that was filed on
 11 October 18, 2010 by ReconTrust. (*Id.*). On January 19, 2011 a paralegal from the law firm
 12 Wright, Finlay & Zak sent Plaintiffs’ counsel an email stating that the notice of default had
 13 been rescinded and recommended the mediation be taken off the calendar. (*Id.* at 7). Bank
 14 of America then did not attend the foreclosure mediation. (*Id.*).

15 On September 21, 2011, Plaintiffs filed their complaint in Nevada state court against
 16 Bank of America, ReconTrust, and MERS (collectively “Defendants”). (*Id.* at 1). The
 17 complaint alleges ten causes of action, including: (1) wrongful foreclosure; (2) slander of title;
 18 (3) the tort of outrage; (4) failure to follow statutory scheme; (5) breach of contract; (6) abuse
 19 of process; (7) consumer fraud; (8) unlicensed debt collection; (9) defamation/libel; and (10)
 20 negligent infliction of distress. (*Id.* at 8-11). Defendant Bank of America is a resident of North
 21 Carolina and MERS is a resident of Delaware. (Opp’n to Mot. to Remand (#14) at 2). The
 22 residency of ReconTrust is in dispute. A Nevada Secretary of State webpage showed
 23 ReconTrust as a dissolved Nevada corporation in 2007, but a list of national banks from the
 24 Office of the Comptroller of the Currency lists ReconTrust as a resident of California as of
 25 October 31, 2011. (Nat'l Bank List (#14-3) at 15).

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¹ BAC Home Loan Servicing later changed its corporate name to that of its parent company, Bank of America. (Compl. (#1-1) at 2 n.1).

1 This case was removed to federal court on October 21, 2011. (Pet. for Removal (#1)).
2 Defendants then moved to dismiss the complaint for failure to state a claim under Fed. R. Civ.
3 P. 12(b)(6) on October 28, 2011. (Mot. to Dismiss (#3)). Plaintiffs filed a motion to remand
4 to Nevada state court on November 10, 2011 and moved to extend time to file a response to
5 Defendants' motion to dismiss until the Court ruled on Plaintiffs' motion to remand. (Mot. to
6 Remand (#6); Mot. to Extend Time (#4)). Plaintiffs' request to extend time to file a response
7 to Defendants' motion to dismiss was granted by minute order on November 22, 2011.
8 (Minute Order (#10)). Accordingly, the only matter presently before this Court is Plaintiffs'
9 motion to remand.

LEGAL STANDARD

11 A defendant may remove an action to federal court if the plaintiff could have initially filed
12 the complaint in federal court, 28 U.S.C. § 1441(a), i.e., if the Court has original jurisdiction.
13 The party seeking removal bears the burden of establishing jurisdiction. *California ex rel.*
14 *Lockyer v. Dynergy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). If a case is removed and the
15 federal court lacks jurisdiction over the matter, the federal court must remand the case to state
16 court. 28 U.S.C. § 1447(c). The removal statutes are to be construed restrictively and any
17 doubts about the right of removal is resolved in favor of remand. *Durham v. Lockheed Martin*
18 *Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006).

19 Federal courts have original jurisdiction over “all civil actions arising under the
20 Constitution, laws, or treaties of the United States” (known as federal question jurisdiction).
21 28 U.S.C. § 1331. “A case ‘arises under’ federal law either where federal law creates the
22 cause of action or ‘where the vindication of a right under state law necessarily turns on some
23 construction of federal law.’” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89
24 (9th Cir. 2002) (citing *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 8–9
25 (1983)). Under the well-pleaded complaint rule, “federal jurisdiction exists only when a federal
26 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc.*
27 *v. Williams*, 482 U.S. 386, 392 (1987). If federal question jurisdiction exists as to certain
28 claims but not others, the federal court has supplemental jurisdiction over any state-law claims

1 that are so related to the claims over which it has original jurisdiction that they form part of the
2 same case or controversy. 28 U.S.C. § 1367(a).

Federal courts also have original jurisdiction over civil actions “where the matter in controversy exceeds the sum or value of \$75,000” and the dispute is between “citizens of different States” (known as diversity jurisdiction). 28 U.S.C. § 1332(a)(1). Accordingly, for the federal court to have diversity jurisdiction over a matter, the party asserting jurisdiction must show: (1) complete diversity of citizenship among opposing parties, and (2) an amount in controversy exceeding \$75,000. *Id.* When the plaintiff seeks declaratory or injunctive relief, the amount in controversy is measured by “the value of the object of the litigation.” *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977). Pursuant to 28 U.S.C. § 1348, “[a]ll national banking associations shall, for the purposes of all . . . actions by or against them, be deemed citizens of the States in which they are respectively located.” *Wachovia Bank v. Schmidt*, 546 U.S. 303, 312 (2006). The Supreme Court has determined that for purposes of § 1348, a national bank is located “in the State designated in its articles of association as its main office.” *Id.* at 318. For a natural person, domicile can be established by showing presence (residence) plus the intent to remain permanently or indefinitely. See *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986).

DISCUSSION

19 Plaintiffs have moved to have this case remanded to Nevada state court claiming that
20 the Court lacks subject matter jurisdiction. (Mot. to Remand (#6) at 3-8). In the alternative,
21 Plaintiffs request that the Court abstain from hearing this matter, arguing that the case involves
22 significant and novel issues of Nevada state law, and that the principals behind the *Rooker-*
23 *Feldman* Doctrine favor abstention. For the following reasons, Plaintiffs' motion to remand and
24 abstain is denied.

I. The Court Has Diversity Jurisdiction Over this Matter

26 The Court denies the motion to remand because the Court has diversity jurisdiction over
27 this case. First, there is complete diversity between Plaintiffs and Defendants. Plaintiffs are
28 residents of Nevada. (Compl. (#1-1) at 2). Plaintiffs do not dispute that Defendants Bank of

America and MERS are residents of North Carolina and Delaware, respectively. (Opp'n to Mot. to Remand (#14) at 2). Plaintiffs do however content that ReconTrust is a Nevada resident because in 2007 the Nevada Secretary of State's website listed ReconTrust as a dissolved domestic corporation. (Business Entity Information (#6-1)). Therefore, according to Plaintiffs, there is no complete diversity in this matter.

Yet a party's residency is to be determined at the time the complaint was filed and the removal effected. See *Strotek Corp. v. Air Transp. Ass'n of Am.*, 300 F.3d 1129, 1131-32 (9th Cir. 2002). As of October 31, 2011, the records of the Office of the Comptroller of the Currency listed ReconTrust as a national bank headquartered in California. (Nat'l Banks List (#14-3) at 15). As ReconTrust is a national banking association, it is deemed a resident of the state in which it is headquartered. 28 U.S.C. § 1348; see also *Schmidt*, 546 U.S. at 307 n.1 (citing to the records of the Office of the Comptroller of the Currency as evidence of the headquarters of national banking associations). Because ReconTrust is currently headquartered in California and was headquartered in California at the time this action was originally filed and when it was removed to this Court, ReconTrust is a California resident. Consequently, there is complete diversity in this matter.

Second, the amount in controversy exceeds \$75,000. Although Plaintiffs were careful not to request damages in excess of \$75,000, Plaintiffs have asked for a declaratory judgment that none of the Defendants "have any interest in the above mentioned Note and Deed of Trust." (Compl. (#1-1) at 11). If a declaratory judgment is given, then Bank of America will be deprived of a note whose principal value is \$120,000.00, which is secured by the Deed of Trust. (Deed of Trust (#14-2) at 1-2). Although the Property is currently only valued at \$25,000, (Appraisal (#6-2)), and the 2009 amendments of NRS § 40.455(3) state that financial institutions are not entitled to a deficiency judgment on this type of a home loan secured by a deed of trust, this amendment does not apply to obligations secured by deeds of trust before October 1, 2009. Laws 2009, c. 310, § 3. The loan in this matter was secured in 2006, and consequently the amendment does not apply and Defendants may seek a deficiency judgment on the note. Because the value of the note to Defendants exceeds \$75,000 and Plaintiffs are

1 seeking a declaration that Defendants have no interest in the note, the amount in controversy
 2 exceeds \$75,000. Consequently, diversity jurisdiction exists in this case.

3 **II. The Court Has Federal Question Jurisdiction Over this Matter**

4 Plaintiffs' motion to dismiss is also denied because two of the causes of action in the
 5 complaint deal with federal questions. The majority of the causes of action in the complaint
 6 deal with state-law claims, including claims for wrongful foreclosure (count 1), slander of title
 7 (count 2), the tort of outrage (count 3), failure to follow statutory scheme (count 4), breach of
 8 contract (count 5), abuse of process (count 6), defamation/libel (count 9), and negligent
 9 infliction of distress (count 10). (Compl. (#1-1) at 8-11). However, two of Plaintiffs' causes of
 10 action—consumer fraud (count 7) and unlicensed debt collection (count 8)—involve federal
 11 questions.

12 In Plaintiffs' claim for consumer fraud, Plaintiffs allege that Bank of America "knowingly
 13 furnished false information to one or more credit reporting agencies in violation of the federal
 14 Fair Credit Reporting Act, 15 U.S.C. § 1681-2(b)." (Compl. (#1-1) at 9). Plaintiffs claim that
 15 this violation of federal law serves as a predicate act for their claim that Bank of America
 16 violated NRS § 598.0923(3), which describes a deceptive trade practice as an action that
 17 violates a state or federal statute or regulation in connection with the sale or lease of goods
 18 or services. Although this is a state cause of action, for Plaintiffs to succeed on this claim a
 19 determination of federal law is required. Because the adjudication of the state cause of action
 20 turns on the construction of federal law, a federal question is presented and this Court
 21 accordingly has original jurisdiction over this claim. See *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir. 2002) ("A case 'arises under' federal law either
 22 where federal law creates the cause of action or 'where the vindication of a right under state
 23 law necessarily turns on some construction of federal law.' " (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 8–9 (1983)); *Nevada v. Bank of America Corp.*,
 24 2011 WL 2633641, at *7 (D. Nev. 2011) (holding federal courts have original jurisdiction if the
 25 state-law claim turns on an interpretation of federal law).

26 Plaintiffs' eighth cause of action also presents a federal question. Plaintiffs allege that
 27

1 ReconTrust did not have a foreign debt collector's license,² which they claim is a violation of
 2 NRS § 649.171 and the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692. (Compl.
 3 (#1-1) at 10). These violations, Plaintiffs claim, are deceptive trade practices in violation of
 4 NRS § 598.0923(1)-(4). (*Id.*). However, Plaintiffs again rely on the violation of a federal
 5 statute (the Fair Debt Collection Practices Act) as one of the bases of their state-law claim.
 6 Consequently, a federal question exists and this Court has subject matter jurisdiction over this
 7 claim.

8 As a federal question exists in two of Plaintiffs' ten causes of action and the state-law
 9 claims all arise out of the same case or controversy (namely, Defendants' filing of the notice
 10 of default), the Court has supplemental jurisdiction over the remaining state-law claims. This
 11 Court therefore has subject matter jurisdiction over all claims in this matter.

12 **III. No Significant Reason Exists to Abstain**

13 Plaintiffs finally contend that the Court should abstain from adjudicating this case under
 14 the *Rooker-Feldman* Doctrine and because the matter involves significant issues of state law
 15 that have not been addressed by the state courts.³ (Compl. (#1-1) at 10 n. 8, 11-13). The

17 ² It should be noted that Plaintiffs inconsistently allege that ReconTrust failed to obtain
 18 a foreign debt collector's license (which is not required for Nevada residents) and later alleges
 19 that complete diversity does not exist because ReconTrust is a Nevada resident.

20 ³ Plaintiffs have also argued in their reply that the *Burford* and *Younger* abstention
 21 doctrines may apply in this matter as well. (Reply (#15) at 6-7). As these arguments were not
 22 specifically raised in Plaintiffs' motion to remand, the Court will not consider them. See *United*
 23 *States v. Berry*, 624 F.3d 1031, 1040 n.7 (9th Cir. 2010). Even if the Court did consider these
 24 arguments, they would not apply to this case, as the State of Nevada has not concentrated
 25 suits involving the issues presented here in a particular court (required for *Burford* abstention)
 26 and because there is no pending state judicial proceeding on this matter (required for *Younger*
 27 abstention). See *Tucker v. First Maryland Sav. & Loan, Inc.*, 942 F.2d 1401, 1405 (9th Cir.
 28 1991) (listing the factors for *Burford* abstention); *Middlesex Cnty. Ethics Comm. v. Garden*

1 Rooker-Feldman doctrine prevents a federal court from “considering claims that amount to a
 2 review of the state court’s ruling.” *Bax v. City of Sparks*, 2011 WL 1303154, *2 (D. Nev. 2011).
 3 Although Plaintiffs acknowledge that such is not the posture of this case, they contend this
 4 doctrine reflects the need for federal and state courts to respect one another and tread lightly
 5 on the other’s sphere of influence. (Compl. (#1-1) at 11). However, Plaintiffs in their complaint
 6 have asserted causes of action which require the determination of federal law. Furthermore,
 7 the requirements for diversity jurisdiction have been satisfied. As this Court clearly has
 8 jurisdiction over these matters, it would not be invading the state’s sphere of influence by
 9 hearing this case.

10 Finally, Plaintiffs claim this case involves novel and significant issues of state law and
 11 thus the matter should be remanded or at least certified to the Nevada Supreme Court so that
 12 the Supreme Court may address the issues. (*Id.* at 10 n.8). Plaintiffs do not specifically
 13 identify which issues they consider to be novel. The foreclosure issues presented in counts
 14 one, two, four, six, and eight have been addressed repeatedly by courts throughout the state
 15 and cannot be considered novel. This case also does not present any novel issues in count
 16 three for the tort of outrage (the elements of which the Nevada Supreme Court has laid out in
 17 *Star v. Rabello*, 625 P.2d 90, 91-92 (Nev. 1981)), count five for breach of contract, count
 18 seven for consumer fraud, count nine for defamation/libel, and count ten for negligent infliction
 19 of distress. Because this Court has subject matter jurisdiction over this case and no
 20 compelling reason has been presented to abstain, the Court finds it is not necessary to
 21 abstain from hearing this matter.

22 **IV. Attorney’s Fees**

23 Finally, Plaintiffs have requested an award of attorney fees pursuant to 28 U.S.C. §
 24 1447(c), which allows a court to grant expenses incurred as a result of removal upon
 25 remanding a case. As this case will not be remanded to Nevada state court, Plaintiffs’ request
 26 for attorney’s fees is denied.

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 28 *State Bar Ass’n*, 457 U.S. 423, 432 (1982) (listing the factors for *Younger* abstention).

CONCLUSION

For the foregoing reasons, IT IS ORDERED that Plaintiffs' motion to remand (#6) is denied.

DATED: This 31st day of January, 2012.

United States District Judge